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IN THE

Supreme Court of the United States

No. 75-

JAMES MICHAEL TAYLOR and GLORIA JEANE TAYLOR, husband and wife, on behalf of themselves, individually, and on behalf of others who may be members of a class of persons similarly situated, *Petitioners,*

v.

ST. VINCENT'S HOSPITAL, a Montana Corporation, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners, James and Gloria Taylor, respectfully urge this Court to issue a writ of certiorari to review the final judgment of the United States Court of Appeals for the Ninth Circuit in the above-captioned case.

CITATION TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, dated August 26, 1975, is set out in the Appendix, *infra,* at 1a. It is not yet officially reported.

The opinion of the United States District Court for the District of Montana, dated October 26, 1973, also

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set out in the Appendix, *infra,* is officially reported as *Taylor* v. *St. Vincent's Hospital,* 369 F. Supp. 948 (D. Mont. 1973).

JURISDICTION

The final judgment and opinion of the United States Court of Appeals were filed August 26, 1975 (App. at 1a).

No request for rehearing was made.

The certiorari jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE AND RULES AT ISSUE

I. The "Church Amendment" [1] to the Medical Facilities Construction and Modernization Amendments of 1970

In pertinent part the "corporate conscience clause" of the "Church Amendment" to the Medical Facilities Construction and Modernization Amendments of 1970 provides:

> "* * *
>
> Sec. 401 (b) The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act by any individual or entity does not authorize any court or any public official or other public authority to require . . .
>
> (2) such entity to—
>
> (A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abor-

[1] The clause is widely known as the "Church Amendment" because it was proposed by Senator Frank Church of Idaho.

tion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions . . ."

The statute is Public Law 93-45, 93rd Cong., S. 1136, approved June 18, 1973, 87 Stat. 91.

The questioned provision, in effect, expressly permits a federally funded *hospital,* by vote of a majority of the *governing board,* to order physicians not to perform, and prohibit patients from obtaining sterilization and/or abortion procedures. This restriction is allowed by the statute without regard to the needs and wishes of the particular community, physicians, and patients.

II. St. Vincent's Hospital's Ban on Access to Voluntary Sterilization

Section 6 of the "By-Laws, Rules and Regulations of the Medical and Dental Staff of Saint Vincent's Hospital (June 1972)," provides in pertinent part:

> "The Code of Ethics as adopted by:
>
> * * *
>
> "The Catholic Hospital Association (Ethical and Religious Directives for Catholic Health Facilities)
>
> "shall govern the professional conduct of the members of the medical and dental staff."

Under part II, "Procedures Involving Reproductive Organs and Functions," the "Ethical and Religious Directives for Catholic Health Facilities" provide:

> "Directive
>
> "18. Sterilization, whether permanent or temporary, for men or for women, may not be used as a means of contraception. * * *

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"20. Procedures that induce sterility, whether permanent or temporary, are permitted when: a. They are immediately directed to the cure, diminution, or prevention of a serious pathological condition and are not directly contraceptive (that is, contraception is not the purpose) . . . ."

QUESTIONS PRESENTED FOR REVIEW

I.

Whether the Corporate Conscience Clause of the "Church Amendment" Violates the Right of Privacy, Infringes the Separation of Judicial From Legislative Authority to Define "State Action," or Contravenes the Establishment Clause of the First Amendment?

II.

Whether the Operation of St. Vincent's Hospital Is Under Color of State Law In That the Institution Serves a Broad Community and Public Function, Has Received Substantial Federal and State Funding Under the Hill-Burton Act, Is Closely Regulated and Licensed by the State, Receives Large Financial Benefits From Tax Exemption, and Is Part of a Joint Federal-State Health Care System for the Nation?

III.

Whether St. Vincent's Policy Forbidding Voluntary Sterilization As a Medical Procedure In the Hospital Abridges the Fundamental Personal Rights of Liberty and Privacy for Mr. and Mrs. Taylor protected by the Fourteenth Amendment?

STATEMENT OF THE CASE

I. Facts: [2] Petitioners, James and Gloria Taylor, are a married couple with two children. They reside with their family in Billings, Montana.

Mr. & Mrs. Taylor expected their second child to be delivered on October 31, 1972, in Billings, at St. Vincent's Hospital, by Caesarean section.[3] This operation was to be Mrs. Taylor's third major surgery.[4]

At that time Mr. & Mrs. Taylor decided that they preferred to have no further children. The decision to stop at two children was based upon four factors, more or less: (1) avoidance of further Caesarean sections, which would be necessary for delivery, and the attendant risks of surgery and anesthesia, (2) their financial and economic situation, (3) studied preference for a two child family, and (4) avoidance of expense from further surgery.

The Taylors preferred St. Vincent's Hospital as the site for the second delivery because of the superior fetal monitoring facilities there, the fact that it is the only hospital in Billings with a maternity service, and the further fact of an intensive care nursery facility.

---

[2] Many of the factual contentions were agreed upon and embodied in a Final Pre-Trial Order, which is part of the Record.

[3] Caesarean section ranks eighteenth (18th) among the fifty (50) most frequently performed hospital operations in the United States, and carries a statistical mortality risk of about 111 per 100,000 operations, about one-third that of appendectomy. *See* Kincaid, Deaths in Hospitals Following Surgery, 9 Professional Activities Survey Reporter, No. 12, at 1-3 (Oct. 25, 1971).

[4] The October 31, 1972, operation was her second Caesarean. The third operation was to remove an ovary.

To effectuate their decision to have no more children after the second, Mr. & Mrs. Taylor requested permission for her to have a tubal ligation (sterilization operation) performed at the same time as the Caesarean section. This is a common medical procedure which saves the patient from multiple surgery and the attendant risks.[5]

St. Vincent's Hospital, however, refused to permit Mrs. Taylor to have a tubal ligation, basing its refusal on a By-Law which incorporates by reference the ban on contraceptive sterilization from the "Ethical and Religious Directive for Catholic Health Facilities."

St. Vincent's is a non-profit Montana corporation. A majority of directors are members of the Congregation of Sisters of Charity of Leavenworth, a religious order organized pursuant to authorization of the Roman Catholic Church. Some of the Congregation members are employed as administrators and/or nurses at St. Vincent's. Sisters of Charity of Leavenworth, another corporation, holds title to the hospital's facilities in Billings, Montana.

There are only two hospitals in Billings: St. Vincent's and Billings Deaconess Hospital. The maternity departments of the two, moreover, were consolidated into one in June 1972, at St. Vincent's.

In addition to general comprehensive tax exemption, licensing, and regulation by the State, St. Vincent's Hospital has received at least $390,490 in remodeling

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[5] An abdominally performed tubal ligation, like the Caesarean section, requires incision and anesthesia.

A standard text, R. TeLinde & R. Mattingly, Operative Gynecology 377 (4th ed. 1970), states: "Sterilization accompanying caesarean section is a common and convenient time to do the procedure when the section is needed."

and construction grants under the joint federal-State Hill-Burton Act program.[6] Billings Deaconess Hospital received $450,000.[7] Throughout the State of Montana as a whole, fifty-four (54) different hospitals in forty-five (45) cities and towns have received $16,623,000 in Hill-Burton grants.[8] About 45% of these funds were granted to denominational hospitals.[9]

On a national scale, a total of 1398 public and 2267 non-profit community general hospitals have been the recipients of about $3.7 billion in Hill-Burton grants since inception of the program.[10] It is estimated that 35% of the general hospital beds in the United States were financed by the Hill-Burton program.

As shall appear more fully hereinafter, Hill-Burton was set up for the purpose of assisting "public or other nonprofit community hospitals . . . to furnish adequate hospital, clinic, or similar services to all their people. . . ." 42 U.S.C. § 291(a). *All,* as interpreted by St. Vincent's Hospital, excludes patients who need voluntary sterilization procedures.

II. When and How the Federal Questions Were Raised and Decided Below

Mr. & Mrs. Taylor filed a Verified Complaint in the United States District Court for the District of Montana, Billings Division, on October 25, 1972, commenc-

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[6] Hill-Burton Project Register, July 1, 1947-June 30, 1971, pp. 178-181 (June 30, 1971).

[7] *Id.*

[8] *Id.*

[9] *Id.;* Guide Issue, Journal Am. Hosp. Ass'n (Aug., 1972).

[10] Facts About the Hill-Burton Program, July 1, 1947-June 30, 1971, p. 4 (H.E.W. 1972).

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ing this civil action and requesting immediate injunctive relief to enable Mrs. Taylor to have a tubal ligation at the same time as the Caesarian section scheduled for October 31, 1972, six days away.

Jurisdiction was predicated upon 28 U.S.C. § 1343 (3), in conjunction with 42 U.S.C. § 1983, and a class action alleged. Mr. & Mrs. Taylor asserted rights under the First, Ninth, Fourteenth, and other amendments to the Constitution. They further claimed that the policy of St. Vincent's Hospital forbidding voluntary sterilization generally, and in Mrs. Taylor's case particularly, violated the Establishment Clause of the First Amendment. In addition to injunctive relief, Mr. & Mrs. Taylor made a claim for actual and special damages.

After a hearing, the District Court issued its first Memorandum Opinion and Order on October 27, 1972. *Taylor* v. *St. Vincents Hosp.*, Civ. No. 1090 (D. Mont.).

The Court found jurisdiction under 28 U.S.C. § 1343, and that St. Vincent's Hospital was "acting under color of law" because of "the advantageous position accorded it by [Montana's] tax structure and the benefit it has received by virtue of Hill-Burton funds." Accordingly, the Court issued an injunction allowing Mrs. Taylor to have a tubal ligation with the Caesarean section.

On November 1, 1972, the District Court issued a second Memorandum Opinion and Order and an Amended Memorandum Opinion and Order. The latter contracted the previously issued injunction against the hospital to cover only sterilizations requested "contemporaneously with a Caesarean section. . . ." The

former further elaborated the basis of the Court's overall decision.

First, the Court stressed the fact that St. Vincent's was the "exclusive maternity facility in the area." The Court then stated:

> "[T]he exclusive public service function of this hospital is sufficiently affected by the general control of state law and regulation and connected sufficiently with federal funds administered by the state to justify a finding that the defendant is acting under color of law for purposes of application of 42 U.S.C. § 1983."

Further reliance was placed upon the facts of "tax dispensation under Montana law," and "strict licensing, regulation and control of hospitals" under Montana law.

The case then proceeded through discovery and pretrial.

Enactment of the "Church Amendment" to the Medical Facilities Construction and Modernization Amendments of 1970, Public Law 93-45, 93rd Cong., S. 1136, 87 Stat. 91 (June 18, 1973), dramatically altered the approach of the District Court. The final Opinion and Order, issued October 26, 1973, reversed itself and denied all relief. 369 F. Supp. 948 (D. Mont. 1973), solely because of the Church Amendment.

The District Court first characterized petitioner's claims of jurisdiction under 42 U.S.C. § 1983 over the hospital as "grounded primarily on the fact that Hill-Burton grants have been used to defray a portion of the cost of hospital remodeling and construction over the years." 369 F. Supp. at 950. Reliance on the receipt of Hill-Burton funds to support a finding of

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"state action," however, was now barred by the Church Amendment. According to the District Court, "this Act prohibits any court from finding that a hospital which receives Hill-Burton funds is acting under color of state law." 369 F. Supp. at 950. The Court cited segments from the legislative history indicating that one objective of the Act may well have been specifically directed toward overruling its prior decisions in the case. 369 F. Supp. at 950 n.1, citing 1973 U.S. Code Cong. & Admin. News, p. 1553.

No consideration was given to finding "state action" based upon other factors which had weighed so heavily in the District Court's prior decisions. The factors of "exclusive public service function," "tax dispensation under Montana law," and "strict licensing, regulation and control of hospitals" were all ignored.

Petitioners had filed a memorandum with the District Court contesting the Church Amendment as unconstitutional. Without analysis, discussion, or even citation of authority, the District Court stated in one sentence: "[T]he case law relied upon by plaintiffs relates to parochial schools and is distinguishable from the instant case." 369 F. Supp. at 951.

Further, the District Court found, the Church Amendment was a valid Congressional limitation on the jurisdiction of the lower federal courts, and appropriate legislation regarding the remedies which such courts might grant. Two cases, neither of which appears fully to control, were cited, *Lockerty* v. *Phillips,* 319 U.S. 182, 187 (1943), and *Aetna Life Ins. Co.* v. *Haworth,* 300 U.S. 227, 240 (1937).

Petitioners then appealed to the United States Court of Appeals for the Ninth Circuit, further pressing

their federal constitutional claims which are again raised in this Court.

The Ninth Circuit, on August 26, 1975, affirmed, noting that "virtually all of the issues raised by this appeal have recently been resolved adversely to appellants by another panel of this court. *Chrisman* v. *Sisters of St. Joseph of Peace,* 506 F.2d 308 (9th Cir. 1974)" (App. at 4a). The Court reiterated the *Chrisman* holdings as follows:

> "I. The Church Amendment (§ 401(b)) properly permits denominational hospitals to refuse to perform sterilizations. 506 F.2d at 310-312.
>
> II. Section 401(b) is not an impermissible legislative limitation upon judicial power, *id.* at 311, nor does it violate the Establishment Clause of the First Amendment. *Id.*
>
> III. If the hospital's refusal to perform sterilization infringes upon any constitutionally cognizable right to privacy, such infringement is outweighed by the need to protect the freedom of religion of denominational hospitals "with religious or moral scruples against sterilizations and abortions." *Id.* at 312. (Citations omitted).
>
> IV. Neither "the enjoyment by the hospital of tax exemptions, its regulation by the state and its performance of a public function" in addition to receipt of Hill-Burton funds, are proper grounds for holding that it acted under color of state law with respect to 42 U.S.C. § 1983. *Chrisman,* 506 F.2d at 312-314." (Appendix at 4a-5a).

Relying upon *Jackson* v. *Metropolitan Edison,* 419 U.S. 345 (1974), the Ninth Circuit further held that the monopoly status of St. Vincent's Hospital did not alter the result.

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Neither the panel below nor that in *Chrisman* analyzed the highly pertinent legislative history of the Hill-Burton Act. The long line of similar cases from the Fourth Circuit which reached a different result were also ignored. *E.g., Duffield* v. *Charleston Area Medical Center, Inc.*, 503 F.2d 512 (4th Cir. 1974); *Christhilf* v. *Annapolis Hosp. Ass'n.*, 496 F.2d 174 (4th Cir. 1974); *Sams* v. *Ohio Valley Gen. Hosp. Ass'n.*, 413 F.2d 826 (4th Cir. 1969); *Simkins* v. *Moses H. Cone Memorial Hosp.*, 323 F.2d 959 (4th Cir. 1963) (en banc), *cert. denied*, 376 U.S. 938 (1964).

Similarly, supporting decisions from the First, Third, Fifth, Sixth, and Seventh Circuits were not addressed. *E.g., Bricker* v. *Sceva Speare Mem. Hosp.*, 468 F.2d 1228 (1st Cir. 1972), *aff'g* 339 F. Supp. 234 (D.N.H.); *Citta* v. *Delaware Valley Hosp.*, 313 F. Supp. 301 (E.D.Pa. 1974); *Pollock* v. *Methodist Hosp.*, 392 F. Supp. 393 (E.D.La. 1975); *Chiaffitelli* v. *Dettmer Hosp.*, 437 F.2d 429 (6th Cir. 1971); *Holmes* v. *Silver Cross Hosp.*, 340 F. Supp. 125 (N.D. Ill. 1972).

This is not to say that Respondent cannot support its position with citation of authority. The split among Circuits is a very serious one.

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REASONS FOR GRANTING THE WRIT

I.

The Court Should Review This Case To Resolve Important Federal Questions and Multiple Circuit Conflicts Concerning the Constitutionality of the Church Amendment "Corporate Conscience Clause" Which Permits Hospital Boards in the National Network of Hill-Burton Community Hospitals To Order Physicians Not To Perform and Prohibit Patients From Obtaining Voluntary Sterilization and/or Abortion Procedures, Regardless of the Needs of the Community, Physicians and Patients.

This case is important and deserves review because it has wide impact on tens of thousands of people. The federal questions, too, are recurring frequently in the lower courts which are sharply divided. Moreover, the decision below is inadequately reasoned and plainly erroneous.

The "corporate conscience clause" of the Church Amendment, held by the Court of Appeals to bar jurisdiction over Petitioners' assertion of their constitutional rights of liberty and privacy, is invalid on any one of three grounds.

A. First, the clause operates to abridge the constitutionally protected right of privacy in matters pertaining to the decision whether to bear or beget further children, a right firmly recognized by the following cases: *Griswold* v. *Connecticut,* 381 U.S. 479 (1965); *Eisenstadt* v. *Baird,* 405 U.S. 438 (1972); *Roe* v. *Wade,* 410 U.S. 113 (1973). It effects this deprivation by denying Petitioners and others similarly situated a cause of action against community non-profit hospitals (funded by the comprehensive state-federal Hill-Burton program) which discriminate against physicians and patients requesting use of

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hospital facilities for voluntary sterilization procedures.

Accordingly, the Church Amendment "may be justified only by a 'compelling state interest' [and] must be narrowly drawn to express only the legitimate state interests at stake," *Roe* v. *Wade,* 410 U.S. 113, 155 (1973). Only one legitimate state interest is remotely related to the "corporate conscience clause," that of protecting personal and individual freedom of conscience. The concept of "corporate conscience" is without a basis or foundation in law. Since the "corporate conscience clause" of the Church Amendment goes far beyond the scope necessary for protection of individual conscience, it unjustifiably abridges the right of privacy, is not "narrowly drawn," and is unconstitutional.

B. Second, the Church Amendment violates the Fourteenth Amendment separation of legislative from judicial function to define the constitutional concept of "state action." The Amendment forbids a court to value funding by the state-federal hospital planning and construction programs of the Hill-Burton Act, 42 U.S.C. § 291, as a factor pointing toward "state action." Article III of the constitution, however, vests the "judicial power of the United States . . . in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Since *Marbury* v. *Madison,* 5 U.S. (1 Cranch) 137 (1803), the Courts, not Congress, have construed the Constitution. Congress may not forbid a Court to give "the effect to evidence which, in its own judgment, such evidence should have . . . ." *United States* v. *Klein,* 80 U.S. (13 Wall.) 128, 147 (1871). A law so decreeing "passe[s] the limit which

separates the legislative from the judicial power." 80 U.S. (13 Wall.) at 147.

If the Church Amendment is valid, then Congress itself may dismantle the Fourteenth Amendment piece-by-piece and overrule any constitutional decision on "state action" a majority finds objectionable on a particular day. Congress may no more contract the Fourteenth Amendment than it may limit freedom of the press to a selected list of approved newspapers.

C. Third, the Church Amendment, on its face, violates the First Amendment command that "Congress shall make no law respecting an establishment of religion . . . ." The "corporate conscience clause" sanctions discrimination by government supported community hospitals against a class of physicians and patients "on the basis of religious beliefs or moral convictions . . . " held by the hospital administration, not the patient seeking medical care. On the one hand, the joint State-Federal Hill-Burton program requires a "State plan [which] shall provide for adequate hospitals . . . for all persons residing in the State . . . ," 42 U.S.C. § 291c(e), while the Church Amendment allows hospitals to impose "religious beliefs or moral convictions . . . " on physicians and patients who do not share those beliefs, but who are persons needing the hospital.

Case law on federal aid to parochial schools is controlling in this similar context of a joint state-federal program aiding "public or other non-profit community hospitals . . . ," 42 U.S.C. § 291(a), including those operated by religious orders. Just as *Norwood* v. *Harrison*, 413 U.S. 455, 462 (1973), held that the "Religion Clauses of the First Amendment strictly confine

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state aid to sectarian education . . . ," so here those clauses limit government support of sectarian medicine.

Hill-Burton grants for construction and facility improvement in non-profit community hospitals operated by a religious order are not constitutionally distinguishable from the administrative operating grants made to parochial schools in New York, and ruled impermissible in *Levitt* v. *Committee for Public Education,* 413 U.S. 472 (1973), nor from maintenance and repair grants, tuition grants and tax credits for sectarian schools found unconstitutional in *Committee for Public Education* v. *Nyquist,* 413 U.S. 756 (1973). Hill-Burton construction grants to denominational hospitals did not differentiate between the medical and religious uses of the facilities. Hospital discrimination in the use of such facilities as regards voluntary sterilization, contraception, and abortion, therefore, result from "excessive entanglement by the State in the affairs of the religious institution." *Levitt, supra,* 413 U.S. at 481.

The "Church Amendment," far from a statement of government neutrality, involves the State and Federal authorities even more deeply in the religious mission of the Hill-Burton funded sectarian hospital. It attempts to exempt sectarian hospitals from public responsibility and to authorize the operation of a hospital according to religious directives. This constitutes the "excessive entanglement" forbidden by the First Amendment Establishment Clause.

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II.

The Court Should Resolve the Conflict of Circuits as to Application of the "State Action" Doctrine to the National Network of Non-profit Community Hospitals Established Under the Hill-Burton Act.

Petitioners have previously cited decisions from six different Circuits which addressed in various settings the problem of federal court jurisdiction [11] over actions against non-profit community hospitals constructed with Hill-Burton funds.[12] The Second,[13] Eighth,[14] and Tenth [15] Circuits, too, have dealt with these issues, coming to different results, each with a unique rationale.

The Fourth Circuit has consistently found state action based upon a sophisticated analysis of participation in the Hill-Burton program alone, or even less. See *Doe* v. *Charleston Area Medical Center, Inc.*, — F.2d — (4th Cir. Nov. 6, 1975) (No. 75-1161), and *Eaton* v. *Grubbs*, 329 F.2d 710 (4th Cir. 1964) (en banc).

By contrast, the Ninth Circuit has most insistently and frequently gone the other way. See, in addition to the instant case, *Christman, supra*, and *Ascherman* v. *Presbyterian Hosp.*, 507 F.2d 1103 (9th Cir. 1974).

The Sixth Circuit has vacillated. Compare *O'Neill* v. *Grayson Cnty. War Mem. Hosp.*, 472 F.2d 1140 (6th Cir. 1973) (state action found), and *Chiaffitelli*,

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[11] Under 28 U.S.C. § 1343 and 42 U.S.C. § 1983.

[12] Hill-Burton has provided grants under 42 U.S.C. § 291 et seq. for initial construction, additions and special units.

[13] *Barrett* v. *United Hosp.*, 506 F.2d 1395 (2nd Cir. 1974).

[14] *Stanturf* v. *Sipes*, 335 F.2d 224 (8th Cir. 1964).

[15] *Ward* v. *St. Anthony Hosp.*, 476 F.2d 671 (10th Cir. 1973).

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supra, with *Jackson* v. *Norton Children's Hosp.,* 487 F.2d 502 (6th Cir. 1973) (no state action).

Definitive guidance from this Court is needed, not only for the increasing number of lower courts confronted with these issues, but also because some 1,398 public and 2,267 non-profit community hospitals have participated in the nationwide Hill-Burton program, receiving over $3.7 billion in grants.[16]

It is important that the citizens who paid the $3.7 billion in federal tax monies expended by Hill-Burton should not be excluded from access to voluntary sterilization and abortion on the basis of religious beliefs held by a handful of hospital administrators who have never been in an operating room.

More importantly, to hold otherwise would allow federally supported non-profit community hospitals to subvert the holdings of this Court in *Roe* v. *Wade,* 410 U.S. 113 (1973), and related cases. Over 35% of the hospital beds in the United States were financed by Hill-Burton moneys.[17] The Act was set up for the purpose of assisting "public or other nonprofit community hospitals . . . to furnish adequate hospital, clinic or similar services to *all* their people . . ." 42 U.S.C. §291 (a). Yet, without direction from this Court, *all* has been taken to exclude from hospitals those patients seeking abortion and sterilization.

The federal and state governments are deeply involved in determining the nature, extent, financing, and quality of health care services in the United States.

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[16] Facts about the Hill-Burton program, July 1, 1947-June 30, 1971, p. 4 (H.E.W. 1972).

[17] *Id.*

The degree of involvement exceeds that with public utilities, *Jackson, supra,* and more nearly approaches the extent found in *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715 (1961), and *Reitman* v. *Mulkey,* 387 U.S. 369 (1967).

The issues in this Petition are recurring and will not go away. They are important to large numbers of people and institutions throughout the United States. There could be no more appropriate case in which to resolve the constitutionality of the Church Amendment and corollary state action questions than the very case which prompted Senator Church to introduce the legislation at issue here.

CONCLUSION

For the reasons set out, this Court should grant the Petition and set this case for plenary review.

Respectfully submitted,

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